

AIR TRANSPORT AGREEMENT
BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF UKRAINE

The Government of the United States of America and the Government of Ukraine, hereinafter referred to as the Parties;

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options at the lowest prices that are not predatory or discriminatory and do not represent abuse of a dominant position and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation;

Being Parties to the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944; and

Desiring to conclude an Agreement for the purpose of establishing air services between and beyond their respective territories;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

- a. "Aeronautical authorities" means, in the case of the United States, the Department of Transportation, or its successor, and in the case of Ukraine, the State Department of Aviation Transport, or its successor;
- b. "Agreement" means this Agreement, its Annexes, and any amendments thereto;
- c. "Air transportation" means any operation performed by aircraft for the public carriage of traffic in passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- d. "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:
 - (1) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Parties; and
 - (2) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties.
- e. "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;
- f. "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead and reasonable return on assets after depreciation;
- g. "International air transportation" means air transportation which passes through the air space over the territory of more than one State;
- h. "Price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- i. "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and/or mail in air transportation;

j. "User charge" means a charge imposed on airlines for the provision of airport, air navigation or aviation security facilities and services, including related services and facilities.

ARTICLE 2

Grant of Rights

1. Subject to the provisions of Annex V, each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:

- a. the right to fly across its territory without landing;
- b. the right to make stops in its territory for non-traffic purposes; and
- c. the rights otherwise specified in this Agreement.

2. The international air services which the designated airlines of the Parties will be authorized to operate shall be specified in Annex I and Annex II.

3. Nothing in paragraph 1 of this Article shall be deemed to grant the right for one Party's airlines to participate in air transportation between points in the territory of the other Party (cabotage).

ARTICLE 3

Designation and Authorization

1. Subject to the provisions of Annex I and Annex II, each Party shall have the right to designate airlines to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels, and shall identify whether the airline is authorized to conduct the type of air transportation specified in Annex I or in Annex II or both.

2. On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operating authorizations and technical permissions, the other Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

- a. substantial ownership and effective control of that airline are vested in the Party designating the airline, nationals of that Party, or both;
- b. the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of

international air transportation by the Party considering the application or applications; and

c. the Party designating the airline is maintaining and administering the standards set forth in Article 6 (Safety) and Article 7 (Security).

ARTICLE 4

Revocation of Authorization

1. Each Party may revoke, suspend or limit the operating authorizations or technical permissions of an airline designated by the other Party where:

- a. substantial ownership and effective control of that airline are not vested in the other Party, the other Party's nationals, or both;
- b. that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement; or
- c. the other Party is not maintaining and administering the standards as set forth in Article 6 (Safety).

2. Unless immediate action is essential to prevent further non-compliance with subparagraphs 1b or 1c of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

3. This Article does not limit the rights of either Party to suspend, limit or condition air services in accordance with the provisions of Article 7 (Aviation Security).

ARTICLE 5

Application of Laws

1. While entering, within or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

2. While entering, within or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by or on behalf of such passengers, crew or cargo of the other Party's airlines.

3. The Parties shall grant, without limitation, in advance, and with a validity of at least twenty-four months, visas for all aircraft crews and cabin crews of each designated airline operating the scheduled services. These visas shall be valid for any number of flights into and out of the territory of the other Party during the period of their validity.

4. The Parties shall grant in advance visas of appropriate duration and scope for the aircraft crews and cabin crews of each designated airline operating charter air services.

5. The Parties shall grant, without limitation, in advance, and with a validity of at least twelve months, visas for airline personnel of designated airlines, and the government officials of the other Party involved in civil aviation. These visas shall be valid for any number of visits into and out of the territory of the other Party during the period of their validity.

ARTICLE 6

Safety

1. The Parties shall take all necessary measures to ensure safe and effective operation of the air transportation covered by this Agreement.

2. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards which may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.

3. Each Party may request consultations concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Party shall take appropriate corrective action. Each Party reserves the right to take action as provided in Article 4 in the event the other Party does not take such appropriate corrective action within a reasonable time.

ARTICLE 7Aviation Security

1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft, acts of sabotage, and other unlawful acts against the safety of such aircraft, its passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Parties shall act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971. In addition, the Parties shall act in conformity with the provisions of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the 1971 Montreal Convention, signed at Montreal on 24 February 1988, upon that Protocol's entry into force for the Government of Ukraine.

4. The Parties shall act in conformity with all aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators who have their principal place of business or permanent residence in their territory and that operators of airports in their territory act in conformity with such aviation security provisions.

5. Each Party agrees to observe the security provisions required by the other Party for entry into, departure from, or while within the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo, mail and aircraft stores prior to and during boarding or loading. Each Party shall also give sympathetic consideration to any request from the other Party for special security measures to meet a particular threat.

6. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, its passengers and crew, airports and air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures, in

accordance with Annex 17 of the Convention, which are intended to terminate rapidly such incident or threat.

7. In order to ensure the highest level of aviation security, the aeronautical authorities shall ensure cooperation and information exchange in the field of aviation security to prevent unlawful interference with civil aviation and strengthen security measures in place at existing airports and to be incorporated in the development of new airport and aircraft design. One goal of the information exchange is to improve gun detection and deter the placement of plastic explosives.

8. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

ARTICLE 8

Commercial Opportunities

1. Subject to Annex IV, the airlines of one Party may establish offices in the territory of the other Party for the promotion and sale of air transportation.

2. Subject to Annex IV, the airlines of one Party may, in accordance with the laws and regulations of the other Party relating to entry, residence and employment, bring in and maintain in the territory of the other Party managerial, sales, technical, operational and other specialist staff required for the provision of air transportation.

3. Subject to Annex IV, each designated airline may perform its own ground handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical and technical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on a non-discriminatory and an equal basis to all airlines; charges shall be based on the costs of services provided and such services shall be comparable to the kind and quality of services as if self-handling were possible.

4. Subject to Annex IV, each airline may engage in the sale of air transportation in the territory of the other Party either directly or, at the airline's discretion, through its agents, or both; in the case of charter operations, however,

this right is subject to charter regulations of the country in which the charter originates that relate to national security or to the protection of passenger funds and passenger cancellation and refund rights. Subject to Annex IV, each airline may sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currency, subject to applicable non-discriminatory licensing laws and regulations.

5. Each airline may convert and remit to its country, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the airline makes the initial application for remittance.

6. The airlines of one Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency. At their discretion, the airlines of one Party may pay for such expenses in the territory of the other Party in freely convertible currencies according to local currency regulations.

7. The airlines of one Party shall be permitted to hold bank accounts in their own names in the territory of the other Party, in currency of either Party, or in any freely convertible currency, at the airline's option.

ARTICLE 9

Customs Duties and Charges

1. On arriving in the territory of one Party, aircraft operated in international air transportation by the designated airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items as food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight) and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges imposed by the national authorities, and not based on the cost of services provided, provided such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

a. aircraft stores introduced into or supplied in the territory of one Party and taken on board, within reasonable limits, for use on outbound

aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

b. ground equipment and spare parts including engines introduced into the territory of a Party for the servicing, maintenance or repair of aircraft of an airline of the other Party used in international air transportation; and

c. fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.

3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The exemptions provided by this Article shall also be available where the airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article.

5. The designated airlines of one Party may, in accordance with the laws and regulations of the other Party relating to customs and duties, bring in and maintain at each of the points on the agreed routes within the territory of the other Party material and equipment required by those airlines for the provision and promotion of air services. Printed catalogues, price lists, trade notices or tourist or other literature (including posters) shall be admitted duty free.

ARTICLE 10

User Charges

1. User charges which may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory and equitably apportioned among categories of users. In any event, user charges shall be assessed on all airlines of each Party on terms not less favorable than the most favorable terms available to any other airline operating similar air transportation at the same time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, an equitable portion of the full cost to the competent charging authorities or bodies providing the appropriate airport, airport environmental, air

navigation, and aviation security facilities and services at the airport and within the airport system. These charges may provide for a reasonable rate of return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis. Reasonable notice shall be given prior to changes in user charges.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary for an accurate review of the reasonableness of the charges.

4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 14, to be in breach of a provision of this Article unless (a) it fails to undertake a review of a charge or practice that is the subject of complaint by the other Party within a reasonable time period; or (b) following such a review, it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

ARTICLE 11

Fair Competition

1. Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air transportation covered by this Agreement.

2. Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Party.

3. Subject to Annexes I and II, each Party shall allow each designated airline to determine the frequency and capacity of the international transportation it offers based upon commercial considerations in the market place; consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as provided for in Article 4 of this Agreement or as may be stated in any applicable Annex, or required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

4. Neither Party shall impose, nor shall it allow its designated airlines to impose, on the other Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.

5. Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph 3 of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.

ARTICLE 12

Pricing

1. Each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

- a. prevention of unreasonably discriminatory prices or practices;
- b. protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position;
- c. protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support; and
- d. protection of airlines from prices that are artificially low and offered with the intent of eliminating competition.

2. Each Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required.

3. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Party for international air transportation between the territories of the Parties, or (b) an airline of one Party for international air transportation between the territory of the other Party and any other country, including in both cases transportation on an interline or intraline basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties

reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the price shall go into effect or continue in effect. In the event that, after an initial consultation, the Parties do not reach agreement with respect to the price at issue, a second consultation may be held if the Parties agree that it is necessary.

ARTICLE 13

Consultations

Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed.

ARTICLE 14

Settlement of Disputes

1. Any dispute arising under this Agreement which is not resolved by a first round of formal consultations, except those which may arise under paragraph 3 of Article 12 (Pricing), may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, the dispute shall at the request of either Party be submitted to arbitration in accordance with the procedures set forth below.
2. Arbitration shall be by a tribunal of three arbitrators to be constituted in accordance with the following subparagraphs:
 - a. within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;
 - b. if either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedures. The tribunal, once formed, shall have the jurisdiction to grant interim relief pending its final determination. At the direction of the tribunal or at the

request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

4. Except as otherwise agreed, each Party shall submit a memorandum within 45 days from the date that the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 days after replies are due.

5. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.

6. The Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

7. Each Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

8. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph 2b of this Article shall be considered to be part of the expenses of the arbitral tribunal.

ARTICLE 15

Termination

Either Party may, at any time, give notice in writing to the other Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) immediately before the first anniversary of the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement of the Parties before the end of this period.

ARTICLE 16

Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 17Entry into Force

This Agreement shall enter into force on the date of signature.

Upon entry into force, this Agreement shall supersede, in relations between the United States of America and Ukraine, the June 1, 1990 Air Transport Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics, with Annexes, as extended and amended by the May 10, 1995 Protocol Between the Government of the United States of America and the Government of Ukraine and the Supplementary Agreement of November 4, 1966, as amended.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

DONE at Kiev, in duplicate, in the English and the Ukrainian languages, this fifth day of June, 2000, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

Steve Pifer

FOR THE GOVERNMENT OF
UKRAINE:



ANNEX I

Scheduled Air Service

Section 1

A. Notwithstanding the first sentence of Article 3, Paragraph 1, each Party shall have the right to designate up to four airlines to operate combination (passenger/cargo) services and two airlines to operate all-cargo services on the routes specified in Section 2 of this Annex.

B. Airlines operating services between the territories of the Parties exclusively under code-share arrangements, with airlines of the other Party, or with airlines of a third country, shall be designated in accordance with Article 3 of this Agreement, and shall be counted against the limits on designations stated above.

Section 2

Airlines of one Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation (1) between points on the following routes, and (2) between points on such routes and points in third countries through points in the territory of the Party which has designated the airlines.

A. Routes for the airline or airlines designated by the Government of the United States:

From the United States:

1. via four European intermediate points¹ to Kiev and Odessa with full traffic rights for non code-share services and without local traffic rights for code-share services with third-country airlines; and
2. to Kiev, Odessa, Lvov, Dnipropetrovsk, and three Ukrainian points to be mutually agreed, and ten Ukrainian points for code-share services with national airlines without local traffic rights.

¹ The intermediate points are to be selected by the Government of the United States and may be changed on one month's written notice transmitted through diplomatic channels.

B. Routes for the airline or airlines designated by the Government of Ukraine:

From Ukraine:

1. for code-share services only, via four European intermediate points² to two U.S. points of Ukraine's choice³ without local traffic rights; and
2. to New York, Chicago, Washington, D.C., Los Angeles, Bangor, three U.S. points to be mutually agreed, and ten U.S. points for code-share services with national airlines without local traffic rights and beyond to three points with full traffic rights.

Section 3

A. Notwithstanding Article 11, paragraph 3, the airlines of each Party designated for combination service may operate up to eighteen (18) round trip frequencies per week and airlines of each Party designated for all-cargo service may operate up to four (4) round trip frequencies per week, over the Routes in Section 2.

B. The frequencies mentioned above may be increased in accordance with Article 13 of this Agreement. Extra sections operated by designated airlines of one Party shall not be counted as a frequency, but must be approved in advance by the aeronautical authorities of the other Party.

Section 4

Each designated airline may, on any or all flights and at its option:

1. operate flights in either or both directions;
2. combine different flight numbers within one aircraft operation;
3. serve points on the routes in any combination and in any order (which may include serving intermediate points as beyond points and beyond points as intermediate points),
4. omit stops at any point or points;

² The intermediate points are to be selected by the Government of Ukraine and may be changed on one month's prior written notification through diplomatic channels.

³ Two U.S. points to be selected among those on Ukraine's route B(2).

5. serve any intermediate point or beyond point not designated on the routes in Section 2 above on a blind-sector basis; and

6. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided, that the service begins or terminates in the territory of the Party designating the airline.

Section 5

On any segment or segments of the routes above, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation beyond such point.

Section 6

In operating or holding out the authorized services on the agreed routes, any designated airline or airlines of either Party, which holds appropriate authority to provide such service, may, on the basis of reciprocity, and subject to the requirements normally applied to such agreements, enter into cooperative marketing arrangements such as blocked-space, code-sharing or leasing agreements with other airlines (including third-country airlines) that also hold appropriate authority, provided that these arrangements do not include cabotage or revenue pooling.

Section 7

A. The designated airlines of each Party may operate a total of four (4) code-share opportunities pursuant to code-sharing arrangements (which may include blocked-space arrangements) between an airline of one Party and an airline of a third country over the intermediate points and to the destinations specified in Sections 2(A)(1) and 2(B)(1). For purposes of this paragraph, a "code-share opportunity" is one combination of one pair of code-share partners and one city-pair, defined as follows:

1. a pair of code-share partners is an airline of one Party and an airline of a third country, and

2. a city-pair is the final segment between a third-country intermediate point and the destination in the territory of the other Party.

The four code-share opportunities may include more than one city-pair and more than one pair of code-share partners.⁴

B. Frequencies operated under code-share services shall be counted as follows:

1. Scheduled air transportation operated under code-share arrangements between airlines of the Parties shall not be counted against the frequency limitation stated in Section 3.
2. Scheduled air transportation between the territories of the Parties operated under third-country code-share arrangements where the airline of the Party does not operate the aircraft into and out of the territory of the other Party, shall be counted as one-half of one frequency for the first Party pursuant to the frequency limitation stated in Section 3.

Section 8

Notwithstanding any other provision of this Agreement, airlines of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable law and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo transportation. Such intermodal cargo services may be offered at a single through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

Section 9

Unless otherwise agreed prior to that date, this Annex shall expire on December 31, 2001. The Parties agree to consult six months in advance of the expiration date to determine whether the provisions of this Annex should be continued or modified. This Section does not modify any other provision of this Agreement regarding consultations and termination.

⁴ The city pairs for each code-share opportunity may be changed with one month's prior written notice transmitted through diplomatic channels.

ANNEX II

Charter Air Services

Section I

Airlines designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to freight forwarder, split and combination (passenger/cargo) charters):

- a. between any point or points in the territory of the Party which has designated the airline and any point or points in the territory of the other Party; and
- b. between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that such traffic is carried via the carrier's homeland and makes a stopover in the homeland for at least two consecutive nights.

In the performance of services covered by this Annex, airlines of one Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; and (2) to carry transit traffic through the other Party's territory.

Section 2

Notwithstanding Article 11, paragraph 3, the annual total number of round-trip charter flights for the airlines of each Party shall not exceed:

- a. one hundred and fifty (150) passenger and combination charters which may only carry traffic originating in the homeland of the airline; and
- b. seventy-five (75) cargo charters which may carry traffic originating in the territory of either Party.

Each Party shall extend favorable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex and charter flights above the number mentioned above on the basis of comity and reciprocity. The above quota may be changed by agreement of the Parties.

Humanitarian charters, approved by the Parties as such, shall not be included in the numerical limitation set forth above.

Section 3

Charter flights shall be operated in accordance with the charter rules of the country in which the charter traffic originates. If a Party applies different rules, regulations, terms, conditions or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

However, nothing contained in the above paragraph shall limit the rights of one Party to require the designated airline or airlines of the other Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

Section 4

Except with respect to the consumer protection rules referred to above, neither Party shall require a designated airline of the other Party, in respect of the carriage of authorized charter traffic on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 3 of this Annex or of a waiver of these regulations or rules granted by the applicable aeronautical authorities.

Section 5

Unless otherwise agreed prior to that date, this Annex shall expire on December 31, 2001. The Parties agree to consult six months in advance of the expiration date to determine whether the provisions of this Annex should be continued or modified. This Section does not modify any other provision of this Agreement regarding consultations and termination.

ANNEX III

Principles of Non-Discrimination Within and Competition Among Computer Reservation Systems

Recognizing that Article 11 (Fair Competition) of the U.S.-Ukraine Air Transport Agreement guarantees to the airlines of both Parties "a fair and equal opportunity to compete,"

Considering that one of the most important aspects of the ability of an airline to compete is its ability to inform the public of its services in a fair and impartial manner, and that, therefore, the quality of information about airline services available to travel agents who directly distribute such information to the traveling public and the ability of an airline to offer those agents competitive computer reservations systems (CRSs) represent the foundation for an airline's competitive opportunities,

Considering that it is equally necessary to ensure that the interests of the consumers of air transport products are protected from any misuse of such information and its misleading presentation and that airlines and travel agents have access to effectively competitive computer reservations systems,

Have reached the following understandings with respect to the agreed international scheduled passenger services under this Agreement:

(1) The Parties agree with respect to CRSs with integrated primary displays that:

- a. Information regarding international air services, including the construction of connections on those services, shall be edited and displayed based on non-discriminatory and objective criteria that are not influenced, directly or indirectly, by airline or market identity. Such criteria shall apply uniformly to all participating airlines.
- b. CRS data bases shall be as comprehensive as possible.
- c. CRS vendors shall not delete information submitted by participating airlines; such information shall be accurate and transparent; for example, code-shared and change-of-gauge flights and flights with stops should be clearly identified as having those characteristics.
- d. All CRSs which are available to travel agents who directly distribute information about airline services to the traveling public in either Party's territory shall not only be obliged to but shall also be entitled to operate in conformance with the CRS rules that apply in the territory where the CRS is being operated.

e. Travel agents shall be allowed to use any of the secondary displays available through the CRS so long as the travel agent makes a specific request for that display.

(2) A Party which allows a multi-access CRS to be operated in its territory without a fully functional neutral, integrated display shall require that the partition of an airline which owns such a CRS, and/or the airline offering the most scheduled services in that Party's territory, shall include at least one display that processes information on international airline services in compliance with the requirements of paragraph (1). This display must be as easy to access and as fully functional as any display maintained by the airline based on airline identity, and its data base shall contain accurate information, be as comprehensive as possible, and not favor the services of the airline whose partition is being accessed. This display shall be presented to the travel agent accessing the airline's partition unless the agent specifically calls up a different display for each individual transaction.

(3) A Party shall require that each CRS vendor operating in its territory allows all airlines willing to pay any applicable non-discriminatory fee to participate in its CRS. A Party shall require that all distribution facilities which a system vendor provides shall be offered on a non-discriminatory basis to participating airlines. A Party shall require that CRS vendors display, on a non-discriminatory, objective, airline-neutral and market-neutral basis, the international air services of participating airlines in all markets in which they wish to sell those services. Upon request, a CRS vendor shall disclose details of its data base update and storage procedures, its criteria for editing and ranking information, the weight given to such criteria, and the criteria used for selection of connect points and inclusion of connecting flights.

(4) CRS vendors operating in the territory of one Party shall be entitled to bring in, maintain and make freely available their CRSs to travel agencies or travel companies whose principal business is the distribution of travel-related products in the territory of the other Party, if the CRS complies with these principles.

(5) Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more stringent requirements with respect to access to and use of communication facilities, selection and use of technical CRS hardware and software, and the technical installation of CRS hardware, than those imposed on its own CRS vendors.

(6) Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more restrictive requirements with respect to CRS displays (including edit and display parameters), operation, or sale than those imposed on its own CRS vendors.

(7) CRSs in use in the territory of one Party, which comply with these principles and other relevant non-discriminatory regulatory, technical, and security standards, shall be entitled to effective and unimpaired access in the territory of the other Party. One aspect of this is that a designated airline shall participate in such a system as fully in its homeland territory as it does in any system offered to travel agents in the territory of the other Party. Owners/operators of CRSs of one Party shall have the same opportunity to own/operate CRSs, which conform to these principles, within the territory of the other Party as do owners/operators of that Party. Each Party shall ensure that its airlines and its CRS vendors do not discriminate against travel agents in their homeland territory because of their use or possession of a CRS also operated in the territory of the other Party.

ANNEX IV

Commercial Opportunities

Section 1

A. Combination Services

Until December 31, 2001, notwithstanding Article 8(l) and (4):

1. Designated airlines of one Party engaged in combination services in the territory of the other Party through code-share operations with third-country carriers may, through either their code-share partners or through the offices of a General Sales Agent, engage in the sale of air transportation only at points on the applicable route in Annex I. Such a General Sales Agent may perform all functions generally performed by a General Sales Agent, which would be subject to applicable non-discriminatory licensing laws and regulations.
2. Non-designated airlines of one Party engaged in combination services that do not serve the other Party either directly or through code-share operations may not establish offices or engage in the sale of air transportation directly in the territory of the other Party.

B. All-cargo services

Until December 31, 2001, notwithstanding Article 8(1) and (4):

1. Airlines of one Party, designated for operation of all-cargo services, which serve the territory of the other Party only through code-share arrangements with third-country airlines, may:
 - a. engage in the sale of air transportation: (i) only through their code-share partners or through the offices of agents selected by such designated airlines and duly authorized by the competent authorities of the other Party pursuant to generally applicable non-discriminatory licensing laws and regulations; and (ii) only at points on the applicable route in Annex I.
 - b. enter into agreements with their code-share partners or agents selected by such designated airlines and authorized in the manner set forth in paragraph B(1)(a) of this Section, whereby these partners or agents operate facilities for drop-off, pick-up, delivery or consolidation of those airlines' cargo in the territory of the other Party consistent with these agreements and with applicable non-discriminatory licensing laws and regulations.

2. Airlines of one Party, not designated for operation of all-cargo services, which do not serve the territory of the other Party either directly or through code-share arrangements, may not engage directly in the sale of air transportation or establish offices in the territory of the other Party.

C. Nothing in this section shall limit the ability of airlines to sell air transportation through other agents.

Section 2

A. Subject to the limitations in the preceding Section, each Party will endeavor to ensure that there are available to the designated airlines of the other Party offices for the administration, sale, and promotion of air transportation, including facilities of a quality, accessibility, size, location, and cost not less favorable than that available to its airlines or any other airline engaged in international air transportation.

B. Designated airlines, as well as appropriate authorities, agencies, or departments of both Parties will cooperate in facilitating marketing programs, as well as carrying out measures aimed at securing priority in hotel reservations and other ground arrangements or requirements for travel, for passengers traveling on flights of the designated airlines of both Parties to the extent necessary to assure that the opportunities for such marketing programs, hotel reservations and other ground arrangements or requirements of travel shall be no less favorable for the services of one Party than for the services of the other Party, or for the services of the airlines of any third party.

Section 3

Notwithstanding the provisions of Article 8(3):

1. until such time as Kiev's Borispol Airport has repaid its loan from the European Bank for Reconstruction and Development, the U.S. designated airlines shall be required to obtain a special permission from Borispol Airport to provide self-handling; and
2. without any discrimination, rights to self-handling shall be subject to physical constraints resulting from considerations of airport safety and from the limitations of existing airport facilities, and shall be conducted on the basis of an agreement concluded between the airlines and the airport authorities.

Section 4

Unless otherwise agreed prior to that date, this Annex will expire on December 31, 2001. The Parties agree to consult six months in advance of the expiration date to determine whether the provisions of this Annex should be continued or modified. This Section does not modify any other provision of this Agreement regarding consultations or termination.

ANNEX V

Flight Routes

Section 1

Notwithstanding the provisions of Article 2 of the Agreement, the flight routes of aircraft on the agreed services and the points for crossing national boundaries shall be established by each Party within its territory.

Section 2

Unless otherwise agreed prior to that date, this Annex will expire on December 31, 2001. The Parties agree to consult six months in advance of the expiration date to determine whether the provisions of this Annex should be continued or modified. This Section does not modify any other provision of this Agreement regarding consultations or termination.